

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

VALERO LOGISTICS OPERATION, LP,
et.al.,

Petitioners,

v.

CITY OF TACOMA and PIONEER CAY
DEVELOPING, LLC.,

Respondents.

SHB NO. 06-001

CONCURRING OPINION

I reluctantly concur in the Board's decision to affirm the approval of the Pioneer Cay shoreline substantial development permit. While I agree with the Board's analysis harmonizing the Thea Foss Waterway Design and Development Plan (Thea Foss Plan), the Tacoma Shoreline Master Program, and the specific S-8 District use regulations, I find the proposed project inconsistent with those portions of the Thea Foss Plan purporting to respect and encourage existing industrial uses.

Petitioners identified several passages in the Plan which they claim should provide them protection from incompatible development, most notably:

"The design and development guidelines for the east side encourages [sic] the integration of the area into a mixture of uses while maintaining the working waterfront with commercial uses *and respecting the existing industrial and commercial uses.*" TFWDDP, p. 74, emphasis added.

"Existing industrial uses in the [Northeast Commercial/Industrial District] area *are encouraged to continue their current operations*

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1 until such time as market conditions dictate a change in use.”
2 TFWDDP, p. 77, emphasis added.

3 “Until market conditions drive upgraded uses, *encourage existing*
4 *industrial uses to continue current operations*, and owners of
5 properties and structures currently let for industrial purposes
6 should be encouraged to replace existing industrial tenants as
7 necessary. TFWDDP, p. 79, emphasis added.

8 However, the City’s “respect” and “encouragement” for existing industries along the
9 northeast portion of the Thea Foss Waterway do not amount to regulatory protection. Indeed,
10 whether by design or neglect, even the respect and encouragement offered by the City appears to
11 have been shallow and short-lived.

12 If the City intended to provide *meaningful* protection for existing industrial uses, it could
13 and should have prohibited residential uses (or made them special or conditional uses),
14 particularly in that portion of the S-8 zoning district that includes the Northeast
15 Commercial/Industrial District. And, if the City intended to provide *long-term* protection for the
16 existing industrial uses, it would not have actively solicited redevelopment opportunities in the
17 northeast quadrant of the Waterway that would affect market conditions and “drive upgraded
18 uses” (*i.e.*, drive out existing industrial uses).

19 Petitioners are understandably concerned about the encroachment of residential uses in
20 this industrial area, which they fear will lead to heightened regulation of their existing activities
21 and threaten their economic viability. If the Board were in a position to consider the economic

1 impacts of the proposed development on Petitioners, it would likely have found a range of
2 negative economic consequences that are neither remote nor speculative.

3 The mere presence of a residential development at the proposed location will affect the
4 regulatory obligations of some of the nearby industrial facilities. For example, under the Coast
5 Guard's homeland security planning regulations and the Environmental Protection Agency's risk
6 management planning regulations, additional monitoring, reporting, analysis, and planning will
7 be required as a direct result of the larger volume and different type of traffic and occupants
8 immediately adjacent to hazardous sites. *Testimony of Stowell, McEntee.*

9 The proposed project will also expose its neighboring industrial operations to
10 significantly greater risks of liability and operational constraints, such as state noise regulation
11 violations (which are based, in part, on the character of the receiving property) and nuisance
12 complaints under the Tacoma Municipal Code. *Testimony of Wallace, McEntee.* Examples were
13 provided of shipyards in the Seattle and Duwamish area having to modify or relocate operations
14 as a result of complaints by new residential development. *Testimony of Mason, Slater.* This is to
15 say nothing of the obvious increased liability exposure for accidents of all kinds associated with
16 74 residential condominiums in such close proximity to inherently dangerous activities and
17 facilities.

18 Although it is difficult to imagine that, were the tables turned, the City would ignore the
19 legitimate safety concerns of an existing residential development expressing opposition to a new
20 industrial use, the evidence and testimony in this case reveal that the City failed to protect the
21 existing industrial uses based on the same types of safety concerns. Whether the City's failure

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1 was intentional or simply a result of poor alignment of the Thea Foss Plan with its zoning
2 regulations, the result is the same: changing conditions that may set the stage for economic
3 hardship. As has been noted, however, neither SEPA nor the SMA provide a basis for this Board
4 to consider such economic impacts as part of its environmental review.

5 I recognize and applaud the City's extensive and successful efforts to re-develop the Thea
6 Foss Waterway into an attractive focal place for the enjoyment of the inland waters of Puget
7 Sound within an urban context. It is unfortunate that the City chose to undertake the
8 redevelopment in such a manner that the Thea Foss Plan amounts to hollow support for the
9 existing water-oriented and water-dependent industries in the Northeast Commercial/Industrial
10 District. Ample testimony showed that this heavy industrial core of the northeast district is vital
11 to the region's energy infrastructure as well as an important part of the local economy.

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13 Andrea McNamara Doyle
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